IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

EARL LEON SPRADLIN — PLAINTIFF

VS. — CIVIL ACTION NO. 1:94CV317-D-D

CITY OF FULTON, MISSISSIPPI, et al — DEFENDANTS

MEMORANDUM OPINION

The court comes now to consider defendants' motion for summary judgment. The plaintiff, Earl Leon Spradlin, has sued the City of Fulton, Mississippi and other individuals alleging age discrimination in violation of the Age Discrimination in Employment Act ("ADEA") and violation of state laws. The defendants contend in their Motion for Summary Judgment that plaintiff's ADEA claim is time-barred, that the individuals sued are not "employers" within the meaning of the ADEA, and that plaintiff has insufficiently pled a claim under any state law. After a thorough review of the record in this cause, the undersigned finds that the defendants' motion for summary judgment is partially well taken, and the same shall be granted in part and denied in part.

FACTUAL BACKGROUND

Earl Leon Spradlin was hired to work as a temporary part-time police officer by the City of Fulton on August 30, 1993. At the time he took the job, he had been told that the City would be seeking to fill a permanent full-time position. In the fall of 1993, the City began taking applications for a full-time position. Subsequently, Spradlin and several other people applied for that job.[1] Twenty-two year old Phillip Webb, one of the other applicants, got the job. Spradlin, age fifty-six, was informed

[1]The Hiring Policy in effect at the relevant time required that certain tests be administered with set percentages to be given for each specific criteria; i.e., written test scores counted 50%, agility test scores 25%, interviews 10%, and prior law enforcement 15%, altogether totaling 100%.

of this decision on November 16, 1993 and November 17 was his last day of work.

Some time after the first of 1994, Spradlin contacted the EEOC about filing charges and was informed of a deadline for filing. He signed a charge of discrimination on May 19, 1994 and the EEOC received same May 31, 1994. The plaintiff instituted the instant action in November, 1994.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

DISCUSSION

I. PARTIES AGREE INDIVIDUAL DEFENDANTS SHOULD BE DISMISSED

The defendants assert in their Memorandum Brief in Support of Motion For Summary Judgment that the individual defendants, Jack Creely, James J. McDonald, Boyce McNeece, Cornelious Clemons, Wendell Mabus, and Elizabeth Beasley, are not "employers" within the meaning of the ADEA and should be dismissed. Defendants' Memorandum Brief, at 3-4. "Employer" is defined by the Act as a

> person engaged in an industry affecting commerce who has twenty or more employees . . . . The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State . . . .

29 U.S.C. § 630(b). As such, agents of a political subdivision are not employers and therefore not subject to liability under the ADEA. Rutland v. Office of Atty Gen., State of Miss., 851 F. Supp. 793, 802 (S.D. Miss. 1994) (employer under ADEA includes state and its political subdivisions, but not their agents), aff'd, 54 F.3d 226 (5th Cir. 1995).

The plaintiff, in his Memorandum Brief In Opposition To Motion For Summary Judgment, concedes the defendants' arguments on this issue and has agreed to voluntarily dismiss against the individual defendants. Plaintiff's Memorandum Brief, at 10. As such, the court shall grant summary judgment in favor of the individual defendants and they shall be dismissed from the case.

II. PLAINTIFF FAILED TO SUFFICIENTLY STATE A CLAIM UNDER STATE LAW

Federal Rule of Civil Procedure 8 provides in relevant part that a pleading shall contain

> (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . ., (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

Fed. R. Civ. P. 8(a). Spradlin has not stated which state law or laws the defendants

allegedly violated and contends that the rules do not require him to do so.[2] He further contends that ferreting out under which state law(s) his claim falls is the defendants' duty through discovery. Plaintiff's Memorandum Brief, at 10.

The court is of the opinion that Spradlin has failed to comply with Rule 8, justifying dismissal of any claims under state law. Spradlin has not specified in his Complaint or Plaintiff's Memorandum Brief what claims he has alleged under what anonymous state laws. Furthermore, the plaintiff has demonstrated no genuine issue of fact in regard to any claim under state law. Since the undersigned cannot glean any more information from the pleadings, the court shall dismiss Spradlin's state law claims. Old Time Enters., Inc. v. International Coffee Corp., 862 F.2d 1213, 1219 (5th Cir. 1989) ("A district court and opposing parties are not required to forever sift through such pleadings after the plaintiff has been given notice of the pleading requirements of his case.").

III. ISSUE OF FACT AS TO WHETHER ADEA CLAIM BARRED BY 180-DAY FILING PROVISION[3]

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[2]Spradlin's Complaint states in relevant part:

> The Defendants violated numerous federal and states laws [sic] in its failure to hire the Plaintiff. The failure of the Defendant to hire the Plaintiff severely affected the substantial interest he had in his reputation and his ability to pursue his profession. . . . The Defendants' failure to hire the Plaintiff was arbitrary and unreasonably discriminatory. The Defendants exhibited ill will, malice, improper motive and indifference to the Plaintiff's civil rights by his termination.

The only claim the court can glean from this Complaint that would fall under state law is a claim of defamation. However, Spradlin has put into evidence no facts substantiating such a claim.

[3]Spradlin has asserted two theories, equitable estoppel and equitable tolling, as alternative bases for modifying the time

The defendant contends that Spradlin's ADEA complaint is time-barred. Spradlin had 180 days from the date of the alleged discriminatory act within which to file a charge with the EEOC. 29 U.S.C. § 626(d)(1). The questions facing the court are (1) When did the discriminatory act occur so as to start the running of the 180-day period?; and (2) Are there genuine issues of material fact as to equitable modification of that time period?

A. When Did 180 Days Begin to Run?

The defendant contends that the 180-day time limit started November 16, 1993 when Spradlin was advised that he had not been selected for the full time position. It was also on that date that he first suspected age might have played a part in his rejection. Plaintiff's Depo., pp. 26, 39. His last day of work was November 17, 1993. Spradlin, on the other hand, submits that the limitation period did not begin to run until November 20, 1993 -- the date Phillip Webb was officially hired. With that preface, the plaintiff further argues that he filed his charge with the EEOC on May 19, 1994, exactly 180 days after his alleged starting date for the time limit.

"The operative date from which the 180-day filing period begins to run is 'the date of notice of termination.'" Clark v. Resistoflex Co., 854 F.2d 762, 765 (5th Cir. 1988)(quoting Elliott v. Group Medical & Surgical Serv., 714 F.2d 556, 563 (5th Cir.

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limit as allowed under the ADEA for filing a charge of age discrimination. "'Equitable tolling focuses on the plaintiff's excusable ignorance of the employer's discriminatory act. Equitable estoppel, in contrast, examines the defendant's conduct and the extent to which the plaintiff has been induced to refrain from exercising his rights.'" Rhodes v. Guiberson Oil Tools, 927 F.2d 876, 878 (5th Cir. 1991) (quoting Felty v. Graves-Humphreys, Co., 785 F.2d 516, 519 (4th Cir. 1986)). An example of when equitable tolling would be applicable is if the employer failed to post notices as required under the ADEA. Estoppel would be justified where the employer's misrepresentations or concealment deterred the employer from timely filing. Id.

1983)); Rhodes v. Guiberson Oil Tools, 927 F.2d 876, 878 (5th Cir.), cert. denied, 502 U.S. 868, 112 S. Ct. 198, 116 L.Ed.2d 158 (1991); see also Pacheco v. Rice, 966 F.2d 904, 906 (5th Cir. 1992) (noting time limit runs when plaintiff knows or reasonably should know of discriminatory act, not when discovers act motivated by discrimination). Following the law of the Fifth Circuit, the court must hold that the time period began to run on November 16, 1993, when Spradlin received effective notice of his termination.

Furthermore, for purposes of counting down the 180 days, the charge is not considered "filed" with the EEOC until it is received by such agency. Taylor v. General Tel. Co., 759 F.2d 437, 440 (5th Cir. 1985). Although Spradlin signed and mailed the charge to the EEOC on May 19, 1994, the EEOC did not receive it until May 31, 1994. Therefore, even using the plaintiff's proposed starting date of November 20, 1994, 180 days had already run by the time the charged was actually filed with the EEOC on May 31, 1994. However, the court's inquiry does not stop there. The next question is whether sufficient facts are alleged, or genuine issues of fact remain, which would support the court applying equitable principles to modify the time limit so as to allow this suit to be brought.

B. Genuine Issues of Fact Exist as to Estoppel

The Fifth Circuit adopted the standard employed by the Fourth Circuit in determining when an employer should be estopped from asserting as a defense the 180-day time limit for filing complaints with the EEOC. Clark, 854 F.2d at 768-69 (citing Felty v. Graves-Humphreys, 818 F.2d 1126, 1128 (4th Cir. 1987)). The Fourth Circuit described the "level of employer culpability required to trigger equitable estoppel in terms of a recklessness standard." Id. The employer must have (1) deliberately designed to delay the employee's filing, or (2) taken actions which the employer should have unmistakably understood would result in such delay. Id.

The plaintiff in Clark was forty-eight years old when his employer terminated him. Id. at 674. His termination letter set out several details concerning his pending unemployment and also described the terms under which he would receive severance pay. Finally, the letter reserved to the employer the right to terminate the severance agreement should the plaintiff violate any "obligations hereunder or take any action, by word or deed, which would be derogatory or detrimental to or otherwise prejudicial to" the employer. Id. The Fifth Circuit held that, under those circumstances, a reasonable trier of fact could conclude that the employer's actions deterred the plaintiff from timely filing a charge with the EEOC and thus that estoppel could be appropriate. Id. at 769.

The actions which Spradlin alleges of the defendant are not blatantly threatening as in Clark, but could be construed as similarly deterring a timely filing. Spradlin contends that the defendant misled him into believing he would be hired as a full-time police officer soon after Mr. Webb had been hired. In his deposition, he testified that the police chief told him that, "if there's any consolation to you, we're going to hire another policeman a little later on." Plaintiff's Depo., p. 19. Furthermore, the plaintiff submits that the police chief allegedly "left the impression that the next man in line which was [Spradlin] would be hired." Plaintiff's Depo., p. 27. Although, Spradlin does not argue that the chief told him specifically he would be hired, such literal misrepresentations are not required for a defendant to be estopped in this situation. Rhodes, 927 F.2d at 880 (defendant estopped due to misrepresentations by implication). Of special interest to the court is the fact that the defendant has presented no record evidence disputing Spradlin's version of the facts on this issue.

As such, a reasonable trier of fact could find the defendant's conduct, as alleged by Spradlin, to be of the type which would mislead a reasonable employee

into sleeping on his rights. Although Spradlin apparently was aware of his rights and even inquired of the EEOC -- before the 180-day deadline -- as to his rights,[4] viewing the facts in the light most favorable to Spradlin, the defendant should have realized its actions would delay or deter a charge of age discrimination. As such, Spradlin has demonstrated that genuine issues of fact exist as to equitable modification of the 180-day time limit for filing a charge of age discrimination under the ADEA.

C. Genuine Issues of Fact Exist as to Tolling

In addition, Spradlin alleges as an alternative basis for tolling a lack of posted notices informing him of his rights. The ADEA requires every employer to post information "upon its premises" informing its employees of their rights under the Act. 29 U.S.C. § 627. Failure to do so can result in the application of equitable tolling principles. Clark, 854 F.2d at 767. Spradlin has alleged that he did not "see" any notices posted. Spradlin Affidavit, dated September 14, 1995. The defendant has cited several cases for the proposition that such an allegation alone is not sufficient to justify tolling. See, e.g., Hrzenak v. White-Westinghouse Appliance Co., 682 F.2d 714, 719 (8th Cir. 1982) (plaintiff's statement that he did not see posted notices insufficient standing alone to toll time limit); Bomberger v. Consolidated Coal Co., 623 F. Supp. 89, 92 (W.D. Penn. 1985) (same). However, in each of those cases, the defendant employer put into the record an impressive display of evidence that he had posted the required notices on his premises. In the case sub judice, the defendant has submitted **no** evidence on the issue of whether or not notices were posted.

The defendant further argues that Spradlin had sufficient knowledge of his rights even without posted notices so as to not toll the time running. If such notice

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[4]The EEOC gave him a deadline for filing, which Spradlin testified he can no longer remember. Plaintiff's Depo., pp. 30-31. Again, however, the defendant has provided no record evidence of what deadline the EEOC might have provided to Spradlin.

is not posted or not sufficiently posted, "the filing period is tolled unless or until the employee has acquired actual knowledge of his ADEA rights or acquires the 'means' of such knowledge by consulting an attorney about the discriminatory act." Clark, 854 F.2d at 768; see also Pruet Prod. Co. v. Ayles, 784 F.2d 1275, 1280 (5th Cir. 1986) ("[M]ere failure to post notices is not sufficient by itself to support equitable tolling when the employee has the means to learn of the existence of his Title VII rights.").

Knowledge of specific rights under the ADEA is not required. Only a level of "general knowledge of his right not to be discriminated against on account of age, or the means of obtaining such knowledge," is necessary. Id. (emphasis in original and citation omitted). In his deposition, Spradlin stated that on November 16, 1993, he first suspected that his rejection from the full-time position may have been based on his age. Plaintiff's Depo., p. 39. However, his suspicion concerning why he was passed over and his knowledge of his right not to be passed over for that reason are two different things. The defendant failed to distinguish between the two in its argument. The undersigned is of the opinion that genuine issues of fact exist as to whether notices were posted and the extent of Spradlin's knowledge of his rights under the ADEA.

In any event, this court has the discretion, which it exercises here, to allow the plaintiff's claim to proceed to trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) ("Neither do we suggest . . . that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial"); Rodeway Inns Int'l, Inc. v. Amar Enters., Inc., 742 F. Supp. 365, 369 n.5 (S.D. Miss. 1990) ("Even if a movant is entitled to summary judgment, a district court may, in its discretion, deny the motion in order to give the parties the chance to fully develop the facts at

trial").

CONCLUSION

For the foregoing reasons, the undersigned is of the opinion that the individual defendants are not liable under the ADEA and, with the plaintiff's concession, they shall be dismissed from this action. Furthermore, the court is of the opinion that the plaintiff has failed to comply even with the generous notice pleading requirements of Rule 8 in regard to stating a claim under state law and, as no genuine issue of material fact exists as to those claims, they shall be dismissed. And, finally, as there exist genuine issues of fact concerning whether the defendant should be estopped from asserting the 180-day time limit, the plaintiff shall be allowed to proceed to trial on his ADEA claim. Finding the defendants' motion for summary judgment partially well taken, the court shall grant in part and deny in part same.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of November, 1995.

United States District Judge

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EARL LEON SPRADLIN — PLAINTIFF

VS. — CIVIL ACTION NO. 1:94CV317-D-D

CITY OF FULTON, MISSISSIPPI, et al — DEFENDANTS

ORDER GRANTING SUMMARY JUDGMENT IN PART AND DENYING IN PART

Pursuant to a memorandum opinion entered this day, the court upon due consideration of defendant's motion for summary judgment, finds the said motion partially well taken and the same will be granted in part and denied in part.

It is therefore ORDERED that:

1) pursuant to plaintiff's concession, the individual defendants, Jack Creely, James J. McDonald, Boyce McNeece, Cornelious Clemons, Wendell Mabus, and Elizabeth Beasley, be, are hereby, DISMISSED;

2) plaintiff's state law claims be, and are hereby, DISMISSED;

3) defendant's motion for summary judgment as to plaintiff's ADEA claim be, and it is hereby, DENIED.

All memoranda, depositions, affidavits and other materials considered by the court in granting defendants' motion for summary judgment are hereby incorporated into and made a part of the record in this cause.

SO ORDERED this ___ day of November, 1995.

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United States District Judge